

COPY

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FILED

JUN 08 2007

PETITION OF THE CITY OF ELKHART,
INDIANA, FOR AUTHORITY TO
INCREASE ITS RATES AND CHARGES
FOR WATER SERVICE, AND FOR
APPROVAL OF NEW SCHEDULE OF
RATES AND CHARGES APPLICABLE
THERE TO

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INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 43191

**JOINT STIPULATION AND SETTLEMENT AGREEMENT BETWEEN
THE CITY OF ELKHART AND THE OFFICE OF
UTILITY CONSUMER COUNSELOR**

On December 11, 2006, Petitioner, the City of Elkhart ("Petitioner"), filed with the Indiana Utility Regulatory Commission ("Commission") its Petition in this Cause. Prior to the final public hearing in this Cause, Petitioner and the Office of Utility Consumer Counselor ("OUCC") communicated with each other regarding settlement of this Cause and have reached an agreement with respect to all the issues before the Commission. Petitioner and the OUCC stipulate and agree to the following matters:

1. Proposed Order. The Parties stipulate and agree to the issuance by the Commission of a final order in the form attached hereto as Attachment 1 (the "Proposed Order"). Each description of an agreement by the Parties contained in the Proposed Order is incorporated herein by reference and is accepted by each of the Parties as if fully set forth herein. Solely for purposes of settlement, the Parties stipulate and agree that the terms, findings, and ordering paragraphs of the Proposed Order constitute a fair, just and reasonable resolution of the issues raised in this Cause provided they are approved by the Commission in their entirety and without modification.

2. Amount of Stipulated Rate Increase. The OUCC and Petitioner stipulate and agree that Petitioner's current rates and charges should be increased immediately upon the issuance of a Commission Order by 42.77% across-the-board so as to produce \$2,185,281 in additional annual operating revenues, yielding total annual revenues of \$7,294,241 from recurring charges. Petitioner's revenue requirements to which Petitioner and the OUCC stipulate and agree are set forth in the schedules attached hereto as Attachment 2. The Parties stipulate and agree that the rate increase provided herein is just and reasonable and should be approved.

3. Valve Turning. Petitioner agrees to implement a valve-turning program designed to exercise each of Petitioner's valves at least once every four years. Petitioner currently has an eight-year valve-turning cycle. That cycle will be significantly shortened under the proposed settlement, bringing Petitioner closer to the industry standards of turning every valve every two years as preventative maintenance.

4. Conservation. Petitioner agrees to form a Water Conservation Committee which shall develop a 5-year Conservation Plan that will be submitted to the IURC and OUCC within one (1) year of the issuance of a final order in this cause. As part of the program, Petitioner agrees to continue monitoring unaccounted for water and investigate the cause if unaccounted for water exceeds 15%.

5. Compact Fees. Petitioner agrees to amend Ordinance Nos. 4393 and 4528 (and late-file copies of the amendment in this proceeding, with copies served on the OUCC) so as to eliminate the requirement that a compact fee equivalent to a certain percentage of the municipal tax rate be paid in order to receive water service unless and until such time that the compact fee for water service is approved by the Commission in a future regulatory proceeding. Petitioner

shall immediately, on a prospective basis, cease the collection of compact fees in return for water service from water-only customers (i.e., water utility customer not also receiving municipal sewer utility service from the Petitioner) pursuant to Ordinance Nos. 4393 and 4528 and Ind. Code § 36-4-3-21. Unless and until otherwise ordered by the Commission, Petitioner shall no longer collect or require compact fees from customers of Petitioner's water utility who are not also connected to the Elkhart sewer utility. This Stipulation shall have no impact on Ordinance Nos. 4393 and 4528 as applied to municipal sewer utility service.

6. Evidence Admitted. All testimony and evidence prefiled by either party up to and including the date of this Stipulation shall be admissible. The Parties shall jointly offer this Stipulation together with all attachments. The Parties hereby waive cross-examination of each other's witnesses.

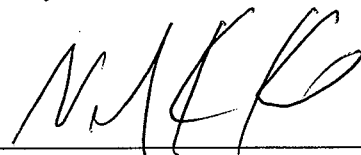
7. Mutual Conditions on Settlement Agreement. Petitioner and the OUCC agree for purposes of establishing new rates and charges for Petitioner that the terms and conditions set forth in this Joint Stipulation and Settlement Agreement are supported by sufficient evidence and based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation into a final Commission order in the form attached hereto without modification or further condition which may be unacceptable to either Party. If the Commission does not approve this Stipulation or does not issue the final order in the form attached hereto in its entirety without modification, the entire Stipulation shall be deemed withdrawn, unless otherwise agreed by the Parties. Petitioner and the OUCC represent that there are no other agreements in existence between them relating to the matters covered by this Joint Stipulation and Settlement Agreement that in any way affect this Agreement.

8. Non-Precedential. As a condition precedent to the Stipulation, the Parties condition their Agreement on the Commission providing assurance in the final order issued herein that it is not the Commission's intent to allow this Stipulation or the Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the settlement agreement. The Parties agree that this Stipulation shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding, except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Stipulation is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any or all the items resolved herein in any future regulatory or other proceedings and, failing approval by this Commission, shall not be admissible in any subsequent proceedings.

9. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Stipulation on behalf of their designated clients, who will be bound thereby.

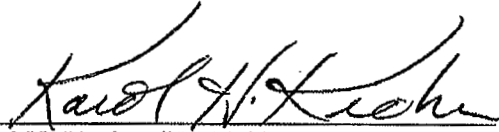
Respectfully submitted,

The City of Elkhart

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF ELKHART,)
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BY THE COMMISSION:

Gregory D. Server, Commissioner

Loraine L. Seyfried, Administrative Law Judge

On December 11, 2006, the City of Elkhart ("Petitioner") filed a Petition for authority to increase its rates and charges for water utility service and approval of a new schedule of rates and charges applicable thereto. Pursuant to notice, the Indiana Utility Regulatory Commission ("Commission") conducted a Prehearing Conference on January 18, 2007, in Room E-306 of the Indiana Government Center South ("IGCS"), 302 West Washington Street, Indianapolis, Indiana. A Prehearing Conference Order was issued on January 24, 2007. Petitioner prefled its case-in-chief on February 7, 2007. Thereafter, the Parties jointly filed two consecutive agreed amendments to the procedural schedule, both of which the Commission approved by docket entry. The second of those agreed procedural filings was made after the parties reached a settlement agreement, giving the parties additional time to document and file their agreed settlement.

On June 8, 2007, the Parties filed a Joint Stipulation and Settlement Agreement ("Joint Stipulation") along with supporting testimony and schedules. Pursuant to notice, as provided by

Attachment 1

law, an evidentiary hearing was convened on May 14, 2007, in the IGCS Room E-306, and continued on the record until June 27, 2007, at 9:30 a.m. EST in the Commission's new office suite, located in the National City Center, Suite 1500 East, 101 West Washington Street, Indianapolis, Indiana. At the June 27, 2007 evidentiary hearing, all evidence was offered and admitted into the evidentiary record of this proceeding, without objection.

Based upon the applicable law and the evidence of record in this Cause, the Commission now finds that:

1. **Notice and Jurisdiction.** Petitioner is a "municipally-owned utility" as that phrase is defined in Ind. Code 8-1-2-1(h), and is subject to the jurisdiction of this Commission under Indiana law including, without limitation, Ind. Code 8-1.5-3-8, and other applicable provisions of Ind. Code 8-1.5-1 *et seq.*, and Ind. Code 8-1-2 *et seq.* Notice of the prehearing conference and the evidentiary hearing was provided as required by law. The Commission has jurisdiction over the Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a municipality that owns and operates plant and equipment within the State of Indiana for the production, transmission, delivery, and furnishing of water to the public within and around the City of Elkhart, Indiana. Petitioner's existing schedule of water rates and charges was approved by the Commission on December 15, 1993, in Cause No. 39780.

3. **Test Year.** The test year used by Petitioner for determining Petitioner's annual revenue requirement in this Cause was the 12 months ended August 31, 2006, with adjustments

for changes which are fixed, known, and measurable and which will occur within 12 months of the close of the test year. We find this test year to be sufficiently representative of Petitioner's ongoing operations to use for ratemaking purposes.

4. **Petitioner's Revenue Requirements.** Petitioner and the OUCC have stipulated and we find that Petitioner's *pro forma* revenue requirement elements are as follows:

Operating Expenses	\$ 3,978,116
Utility Receipts Tax	29,126
Extensions and Replacements	2,580,915
Debt Service	821,000
Total	\$ 7,409,157
Less Interest Income	(56,000)
Less Other Revenues	(58,916)
Net Revenue Requirements	\$ 7,294,241

The parties have agreed that Petitioner's total *pro forma* revenue subject to increase at current rates equals \$5,108,960. The Commission finds that the rates and charges currently in effect for services rendered by Petitioner are not adequate to provide for Petitioner's annual revenue requirement and should be increased. We find that Petitioner should be authorized to increase its rates by 42.77% across-the-board to produce \$2,185,281 in additional annual revenue, yielding total annual revenue of \$7,294,241.

5. **Other Matters.** The Parties also reached agreement on three other matters, discussed below:

- (A) Petitioner agreed to implement a valve-turning program whereby Petitioner will exercise each of its valves at least every four years unless and until otherwise ordered by this Commission in a future regulatory proceeding;
- (B) Petitioner agreed to form a Water Conservation Committee and to develop a 5-year plan, to be provided to the Commission and to the OUCC within one year of the date of this Order; and
- (C) Petitioner agreed to amend its Ordinance Nos. 4393 and 4528 so as to delete the requirement that out-of-town customers pay a compact fee in return for water service. Ordinance Nos. 4393 and 4528 were adopted pursuant to Ind. Code 36-4-3-21 (contracts in lieu of annexation) and requires the compact fee to be paid by persons located outside the corporate limits in areas that cannot be annexed due to lack of contiguity but are connected to either the water or sewer utility. Under the Stipulation, Petitioner will no longer collect the compact fee in return for connection to the water utility unless and until otherwise ordered by this Commission in a future regulatory proceeding. The Stipulation does not affect Petitioner's collection of the compact fee from persons connected to the sewer utility, and so it is water-only customers who will be relieved of this obligation. The Parties agreed that Petitioner should late-file the ordinance amending Ordinance Nos. 4393 and 4528 and serve a copy thereof on the OUCC.

We find that these agreements are reasonable and should be approved.

6. Approval of Stipulation and Settlement Agreement. We find that the Joint Stipulation and Settlement Agreement should be approved. A copy of the Joint Stipulation is attached to this Order and incorporated herein by reference. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Petitioner shall be and hereby is authorized to increase its rates and charges for water utility service by 42.77% across-the-board in order to increase annual operating revenues by \$2,185,281 so as to produce total annual operating revenues of \$7,294,241 from recurring charges.

2. Petitioner shall file with the Accounting and Finance Division of the Commission new schedules of rates and charges before placing in effect the rate increase authorized herein. Upon approval by the Commission's Accounting and Finance Division, Petitioner's revised rate schedules shall immediately take effect and cancel all Petitioner's previously approved schedules of rates and charges.

3. Petitioner shall pay the following itemized charges within twenty (20) days from the date of this Order into the Treasury of the State of Indiana, through the Secretary of the Commission:

Commission Charges \$

Reporting Charges \$

Legal Advertising Charges \$

OUCG Charges \$

Total \$

4. The Stipulation and Settlement Agreement shall be and hereby is approved, and Petitioner shall be and hereby is required to fulfill its obligations thereunder as ordered herein.

5. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:
APPROVED:

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

Brenda A. Howe
Secretary to the Commission

Elkhart Municipal Water Utility
CAUSE NUMBER 43191

Revenue Requirements

	Per Petitioner as filed	Per OUCC Settlement	Sch Ref	OUCC More (Less)
Operating Expenses	\$ 4,285,674	\$ 3,978,116	4	\$ (307,558)
Extension and Replacements	3,632,090	2,580,915	7	(1,051,175)
Debt Service	883,588	821,000	ERK	(62,588)
Total Revenue Requirements	8,801,352	7,380,031		(1,421,321)
Less: Interest Income	56,000	56,000	3	-
Net Revenue Requirements	8,745,352	7,324,031		(1,421,321)
Less: Revenues at current rates subject to increase	5,548,672	5,108,960	4	(439,712)
Other revenues at current rates	504,062	58,916	4	(445,146)
Net Revenue Increase Required	2,692,618	2,156,155		(1,866,466)
Plus Utility Receipts tax on increase (other than on increase to non-taxable receipts)	41,538	29,126		(12,412)
Calculated Increase	2,734,156	2,185,281		(548,875)
Total New URT				
Calculated Percentage Increase	49.28%	42.77%		-6.51%
Requested Percentage Increase	45.00%			

	Per Petitioner as filed	Per OUCC Settlement	OUCC More (Less)
<u>Current Rate for 700 cubic feet</u>			
<u>Elkhart Customers</u>			
Current Rate \$1.04 per first 40 CCF water +1.60 for 5/8" meter			
Currently the cost of 700 cubic feet = \$8.88	\$ 12.88	\$ 12.68	\$ (0.20)
<u>Former Suburban Customers</u>			
Current cost of 700 cubic feet = \$17.72 (minimum)	\$ 12.88	\$ 12.68	\$ (0.20)